# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CHARLOTTE WALL Claimant	)
VS.	) ) ) Dealest No. 250 095
GAGE BOWL, INC. Respondent AND	) Docket No. 250,085 ) ) )
KANSAS RESTAURANT & HOSPITALITY ASSOC. SELF INSURANCE FUND Insurance Carrier	) ) )

## **ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on May 10, 2000.

#### **I**SSUES

Respondent's application for review states only generally that the Order exceeded the ALJ's jurisdiction. In its brief, respondent argues the ALJ exceeded his jurisdiction because the evidence does not support a finding that claimant is temporarily totally disabled.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the issue on appeal is not a jurisdictional issue, the Board does not have jurisdiction at this point in the proceedings to determine the issue raised, and the appeal should be dismissed.

Respondent argues that one physician has released claimant to return to work without restrictions and a second has given restrictions but did not take claimant completely off work. Respondent also points out claimant no longer works for respondent, having been terminated. Claimant argues the opinion of the first physician is not in evidence, that the record contains nothing to show why the claimant was terminated, and the appeal raises no jurisdictional question.

The Board concludes, as argued, the appeal does not raise a jurisdictional issue. K.S.A. 44-534a lists jurisdictional issues. Whether claimant is or is not temporarily totally disabled is not one of the issues listed. Where other jurisdictional prerequisites are met, including notice, timely written claim, and accident arising out of and in the course of employment, the ALJ has jurisdiction to determine whether the claimant is or is not temporarily disabled. The ALJ's decision on this question is not subject to review at this stage of the proceedings.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the Order entered by Administrative Law Judge Brad E. Avery on May 10, 2000, should be, and the same is hereby, dismissed.

#### IT IS SO ORDERED.

Dated this day of June 2000.

## **BOARD MEMBER**

c: Bruce A. Roby, Topeka, KS
Jeffery R. Brewer, Wichita, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director